

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Aug 13, 2024**

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

ISAAC ARNULFO ACEDO  
PERALTA,

Plaintiff,

v.

QUALITY ENTERPRISES LLC,  
d.b.a., QUALITY CLEANING, a  
Washington Limited Liability  
Company,

Defendant.

No. 4:24-CV-05048-ACE

ORDER GRANTING DEFENDANTS'  
MOTION TO DISMISS

**ECF Nos. 10, 11, 13**

**BEFORE THE COURT** is Defendant's June 21, 2024 Motion to Dismiss, pursuant to Federal Rules of Civil Procedure 12(b)(5) and 12(b)(6). ECF No. 10. Plaintiff has also filed a motion requesting "the rebellion be left in effect" and that he be given the opportunity to present the case before the Court, ECF No. 11, a motion "demonstrating the defendant reprisals," ECF No. 13, an opposition to Defendant's motion to dismiss, ECF No. 14, and a "First Amendment Complaint," ECF No. 17, with accompanying "Amended and Supplemental Pleadings," ECF No. 18. Plaintiff has also submitted an *ex parte* document asking that the Court not dismiss the lawsuit. ECF No. 12. Defendant has filed a reply to the motion to dismiss, ECF No. 15, and an opposition to Plaintiff's motion "that the rebellion be left in effect" ECF No. 16. Defendant is represented by Samantha L. Jetton; Plaintiff appears *pro se*. Defendant's motion to dismiss was noted for hearing, without oral argument, on August 12, 2024.

## DISCUSSION

### A. Motion to Dismiss for Insufficient Service of Process - - Defendant Quality Enterprises LLC, doing business as, Quality Cleaning

A motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(5) concerns the service of the summons and complaint. “In the absence of service of process (or waiver of service by the defendant), a court ordinarily may not exercise power over a party the complaint names as defendant.” *Omni Capital Int’l, Ltd. v. Rudolf Wolff & Co., Ltd.*, 484 U.S. 97, 104 (1987) (“Before a federal court may exercise personal jurisdiction over a defendant, the procedural requirement of service of summons must be satisfied.”); *Mississippi Publ’g Corp. v. Murphree*, 326 U.S. 438, 444-445 (1946) (“[S]ervice of summons is the procedure by which a court having venue and jurisdiction of the subject matter of the suit asserts jurisdiction over the person of the party served.”). Rule 12(b)(5) authorizes dismissal based on insufficient service of process.

“A federal court is without personal jurisdiction over a defendant unless the defendant has been served [with the summons and complaint] in accordance with Fed. R. Civ. P. 4.” *Crowley v. Bannister*, 734 F.3d 967, 974-975 (9<sup>th</sup> Cir. 2013) (citation and internal quotation marks omitted); *Travelers Cas. & Sur. Co. of Am. v. Brenneke*, 551 F.3d 1132, 1135 (9<sup>th</sup> Cir. 2009). Rule 4(c) requires that a “summons must be served with a copy of the complaint” and that “[t]he plaintiff is responsible for having the summons and complaint served within the time allowed by Rule 4(m).” Fed. R. Civ. P. 4(c)(1). “Rule 4 is a flexible rule that should be liberally construed so long as a party receives sufficient notice of the complaint.” *Whidbee v. Pierce Cnty.*, 857 F.3d 1019, 1023 (9<sup>th</sup> Cir. 2017) (citation omitted). “Nonetheless, without substantial compliance with Rule 4 ‘neither actual notice nor simply naming the defendant in the complaint will provide personal jurisdiction.’” *Direct Mail Specialists, Inc. v. Eclat Computerized Tech.*, 840 F.2d 685, 688 (9<sup>th</sup> Cir. 1988) (quoting *Benny v. Pipes*, 799 F.2d 489, 492 (9<sup>th</sup> Cir. 1986),

1 amended by, 807 F.2d 1514 (9<sup>th</sup> Cir.), cert. denied, 484 U.S. 870 (1987)). “Once  
2 service is challenged, [P]laintiff[ ] bear[s] the burden of establishing that service  
3 was valid under Rule 4.” *Brockmeyer v. May*, 383 F.3d 798, 801 (9<sup>th</sup> Cir. 2004).

4 In order to properly serve an unincorporated association, a plaintiff must  
5 deliver a copy of the summons and complaint to “an officer, a managing or general  
6 agent, or any other agent authorized by appointment or by law to receive service of  
7 process,” Fed. R. Civ. P. 4(h)(1)(B), and, pursuant to Fed. R. Civ. P. 4(m), a  
8 plaintiff must effectuate service within 90 days after the complaint is filed.

9 Plaintiff filed his complaint in this action on May 3, 2024. ECF No. 1. Joel  
10 Jimenez, a senior manager at Quality Cleaning, was served by a sheriff at his  
11 personal residence on May 7, 2024. *See* ECF No. 10-1 ¶¶ 1-3. However, the only  
12 document served on Mr. Jimenez was the summons. ECF No. 10-1 ¶ 3; ECF No.  
13 8. Because a copy of the complaint was not served upon Mr. Jimenez, service was  
14 improper, *see* Fed. R. Civ. P. 4(h)(1)(B), and, given that more than 90 days have  
15 elapsed since Plaintiff filed his complaint, Plaintiff has failed to effectuate service  
16 upon Quality Cleaning within the time allowed by Rule 4(m).<sup>1</sup> Therefore,  
17 Defendants’ motion to dismiss for insufficient service of process (Fed. R. Civ. P.  
18 12(b)(5)) shall be granted and Plaintiff’s complaint shall be dismissed, without  
19 prejudice, as to Defendant Quality Cleaning.

20 **B. Motion to Dismiss for Failure to State a Claim - - Joel Jimenez,**  
21 **Atilano Sinthia, Gabriel Gutierrez, and Ryan Cook**

22 A motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6)  
23 concerns the failure to state a claim upon which relief can be granted. To survive a  
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25 <sup>1</sup>Plaintiff has filed no specific response or otherwise challenged Defendant’s  
26 motion to dismiss for insufficient service of process. *See* LCivR 7.1(e) (the failure  
27 to properly respond to a motion may be deemed consent to the entry of an order  
28 adverse to the party).

1 Rule 12(b)(6) motion to dismiss, a complaint must contain sufficient factual  
2 matter, accepted as true, to state a claim for relief that is plausible on its face.  
3 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A claim has facial plausibility when  
4 the plaintiff pleads factual content that allows the court to draw the reasonable  
5 inference that the defendant is liable for the misconduct alleged. *Id.* Plaintiff is  
6 obligated to provide grounds for his entitlement to relief that amount to more than  
7 labels and conclusions or a formulaic recitation of the elements of a cause of  
8 action. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007). The Court “may  
9 generally consider only allegations contained in the pleadings, exhibits attached to  
10 the complaint, and matter properly subject to judicial notice” when ruling on a  
11 motion to dismiss. *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025,  
12 1030-1031 (9<sup>th</sup> Cir. 2008) (internal quotation and citation omitted).

13 If the Court dismisses the complaint, or portions thereof, it must consider  
14 whether to grant leave to amend. *Lopez v. Smith*, 203 F.3d 1122, 1130 (9<sup>th</sup> Cir.  
15 2000). “A district court should not dismiss a *pro se* complaint without leave to  
16 amend unless ‘it is absolutely clear that the deficiencies of the complaint could not  
17 be cured by amendment.’” *Rosati v. Igbinoso*, 791 F.3d 1037, 1039 (9<sup>th</sup> Cir. 2015)  
18 (internal citations and quotation omitted). Leave to amend is not appropriate, even  
19 given the liberal pleading standard for *pro se* litigants, when “the pleading ‘could  
20 not possibly be cured by the allegation of other facts.’” *Ramirez v. Galaza*, 334  
21 F.3d 850, 861 (9<sup>th</sup> Cir. 2003) (internal quotation omitted).

22 Although not named as defendants in the caption of the complaint, Joel  
23 Jimenez and Sinthia Atilano are described as defendants in the body of the  
24 complaint and named in the summons. *See* ECF Nos. 1 & 3. Gabriel Gutierrez is  
25 neither named in the caption of the complaint nor described as a defendant in the  
26 body of the complaint but is listed as a defendant in the summons. *Id.* Plaintiff’s  
27 recent filings name Gabriel Gutierrez and Ryan Cook, CEO of Quality Cleaning,  
28 as defendants. *See* ECF Nos. 17-18. In any event, the Ninth Circuit has held that

1 there is no individual liability under Title VII of the Civil Rights Act of 1964.  
2 *Miller v. Maxwell's International Inc.*, 991 F.2d 583, 587-588 (9<sup>th</sup> Cir. 1993)  
3 (“[T]his court’s ruling in *Padway v. Palches*, 665 F.2d 965 (9<sup>th</sup> Cir. 1982)] that  
4 individual defendants cannot be held liable for damages under Title VII is good  
5 law.”); *Holly D. v. Cal. Inst. of Tech.*, 339 F.3d 1158, 1179 (9<sup>th</sup> Cir. 2003) (“[W]e  
6 have consistently held that Title VII does not provide a cause of action for  
7 damages against supervisors or fellow employees.”). Furthermore, Plaintiff’s  
8 complaint fails to contain a facially plausible claim for relief with respect to each  
9 named individual defendant. *See Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S.  
10 at 570). Consequently, Defendants’ motion to dismiss for failure to state a claim  
11 (Fed. R. Civ. P. 12(b)(6)) shall be granted as to Joel Jimenz, Sinthia Atilano,  
12 Gabriel Gutierrez, and Ryan Cook.

13 The Court must consider whether to grant the *pro se* Plaintiff leave to amend  
14 a deficient complaint. *See Ramirez*, 334 F.3d at 861. To the extent Plaintiff has  
15 already attempted to amend the complaint with the filing of his “First Amendment  
16 Complaint,” ECF No. 17, the only noted changes in the new pleading are the  
17 addition of Gabriel Gutierrez and Ryan Cook as named defendants. Because Title  
18 VII does not provide a cause of action for damages against supervisors or  
19 coworkers, the complaint cannot be cured by amendment with respect to Joel  
20 Jimenz, Sinthia Atilano, Gabriel Gutierrez, and Ryan Cook.<sup>2</sup> Accordingly, leave to  
21 amend is not appropriate in this case.

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25 <sup>2</sup>Plaintiff’s opposition to Defendant’s motion to dismiss and “Amended and  
26 Supplemental Pleadings” further demonstrates that Joel Jimenz, Sinthia Atilano,  
27 Gabriel Gutierrez, and Ryan Cook are supervisors for Quality Cleaning. *See* ECF  
28 Nos. 14 & 18.

**C. Motion Requesting that the Rebellion Be Left in Effect**

Plaintiff's "Motion Requesting that the Rebellion Be Left in Effect" appears to suggest that since Defendant's response to Plaintiff's complaint was untimely, the Court should enter a default judgment against Defendant. ECF No. 11.

As discussed in Section A above, service was insufficient in this case. Consequently, the 21-day period to answer Plaintiff's complaint has never been triggered. Entry of default judgment against Defendant is not warranted.

**CONCLUSION**

Based on the foregoing, **IT IS HEREBY ORDERED:**

1. Defendant's Motion to Dismiss, **ECF No. 10**, is **GRANTED**.
2. Plaintiff's Motion Requesting that the Rebellion Be Left in Effect, **ECF No. 11**, is **DENIED**.
3. Plaintiffs' Complaint, ECF No. 1, is **DISMISSED WITHOUT PREJUDICE** with respect to Quality Enterprises LLC, doing business as, Quality Cleaning and **DISMISSED WITH PREJUDICE** with respect to Joel Jimenez, Sinthia Atilano, Gabriel Gutierrez, and Ryan Cook.
4. Defendant's Motion Demonstrating the Defendant Reprisals, **ECF No. 13**, is **DENIED AS MOOT**.

**IT IS SO ORDERED.** The District Court Executive is directed to file this Order, provide a copy to Plaintiff and counsel for Defendant, and **CLOSE THE FILE**.

DATED August 13, 2024.



A handwritten signature in blue ink that reads "Alexander C. Ekstrom".

ALEXANDER C. EKSTROM

UNITED STATES MAGISTRATE JUDGE